

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 90 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DIVISIONAL CONTROLLER

Versus

MELABHAI C WAGHRI

Appearance:

1. Special Civil Application No. 90 of 1997
MS KC THAKKER for MR YOGESH S LAKHANI for Petitioner
MR MUKESH H RATHOD for Respondent
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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 27/02/2004

ORAL JUDGEMENT

The petitioner - Gujarat State Road Transport Corporation has approached this Court under Article 227 of the Constitution of India challenging the judgment and

award passed by the Labour Court, Nadiad in Reference (L.C.N.) No. 127 of 1988. By the said award, order dated 30th April, 1987 terminating the service of the respondent is quashed and set aside and the petitioner has been directed to reinstate the respondent in service by giving him some light duty such as 'Helper' or 'Peon' with continuity of service and 100% backwages.

2. The facts of the case as they emerge from the judgment are that the respondent at the relevant time was discharging his duty as conductor with the petitioner. He was working for the petitioner for last 15 years from the date of the accident which took place on 23rd February, 1985. The respondent after completing his duty, was going home and for that he boarded the bus of the petitioner from Vaso and got down at village Sora. He again boarded the bus going to Dakor and again got down at the cross roads of village Darej. At that time when he was about to cross the road, a motor car knocked him down, as a result of which he sustained fracture of the left leg. He was hospitalized at Nadiad for about one and half month as indoor patient. Thereafter, he was discharged from the hospital. Since it was not possible for him to work as a conductor any more, he requested the petitioner for assigning him light duty. But his request was not acceded to and his service was terminated with effect from 30th April, 1987 on the ground of unauthorized absenteeism. According to the respondent, he had duly intimated about the incident of 23rd February, 1985 and the fact regarding his hospitalization to the authorities, but that was not taken into account. He, therefore, made a grievance that despite the fact that he was working for the last 15 years, his service was terminated and the persons junior to him were retained in the employment. According to the respondent, the petitioner before terminating his service had not followed any procedure. It was his grievance that even if his service was terminated on account of he being medically unfit, he ought to have been given proper opportunity of hearing or he could have been assigned light duty. He, therefore, raised industrial dispute which was placed before the Conciliation Officer, but since the efforts failed, the dispute was referred to the Labour Court for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947. Before the Labour Court, the respondent filed statement of claim and he raised the same averment. Over and above that, he pleaded that by virtue of the settlement that was arrived between the petitioner and the employees Union, he was required to be given light duty, but he could not be dismissed or discontinued from the service on the ground of unfitness.

2.1. This claim was contested by the petitioner by filing reply at Exh. 7. It was contended that the averments made in the statement of claim were not true and not admitted and further that the order terminating respondent's service was just and proper and there was no reason to interfere with the same.

2.2. During the course of the hearing, both the sides produced relevant evidence in support of their cases. Of course, the respondent did not produce any documentary evidence, but the petitioner brought on record several documents which were admitted with the consent of the respondent. It appears from the judgment that the main basis of the respondent's case was Clause 59 (6) of the aforesaid settlement. The said Clause pertained to the employee who had suffered injury on account of some accident and he was not able to perform his regular duties. In such circumstances, it was decided that the work involving light duties could be given to such employee, however, while placing him on other inferior post, after considering the length of the service, he should be given all the increments that he was entitled to receive on his original post together with other benefits. Thereafter, his basic salary could be decided. The respondent's claim was that by virtue of this, he was required to be continued in service by assigning him some light duties. The say of the petitioner is that, since he was unfit, he could not be continued in service. The Labour Court at the end of the proceedings came to the conclusion that in accordance with the settlement, the petitioner ought to have given alternative job to the respondent, but that has not been done. The Labour Court, therefore, declared the order terminating the service of the respondent as illegal and quashed it. It further directed that the respondent be reinstated and he could be given light duty together with all the backwages and continuity of service. It is this award which is not under challenge.

3. Ms. K.C. Thakkar for Mr.Y.S. Lakhani learned advocate appearing for the petitioner has submitted that the reliance placed by the Labour Court on the aforesaid Clause of the settlement, was erroneous. According to her, the respondent met with the accident while he was crossing the road to go home. According to her, this cannot be said to be in the course of the employment and, therefore, the respondent's case cannot be considered in light of Clause 59 (6) of the settlement. In support of her contention she has placed reliance on the decision rendered by the Apex Court in the Case of Regional

Director, E.S.I. Corporation & Anr., v. Francis De Costa & Anr., reported in A.I.R. 1997 S.C. 432.

3.1. As against that Mr. Mukesh Rathod learned advocate appearing for the respondent has submitted that the petitioner cannot at this stage be allowed to raise such contention as no such contention was raised before the Labour Court. He has, further contended that had this contention been taken before the Labour Court, the respondent could have led proper evidence to establish that it had happened during the course of the employment and that he was entitled to receive the benefit of the said Clause. In the alternative, he has submitted that the respondent met with the accident while he was going home after discharging the duty and the injuries suffered by him is said to be while in the course of the employment. He has placed reliance on the decision of the Apex Court rendered in the case of General Manager B.E.S.T. Undertaking v. Mrs. Agnes reported in A.I.R. 1964 S.C. 193. He has also placed reliance on the decision rendered by the Apex Court in the case of Dilip Singh v. General Manager, Central Railway, Mumbai & Ors., reported in 2002 II CLR 25. It is stated at the bar that at the time of admission of this petition, the petitioner has reinstated the respondent in service and he was given the duty of Peon. It is further stated that on 31st January, 1998, he has retired from the service. In light of the aforesaid development, which has taken place after the admission of the petition, this has now become academic question and in my opinion, it is not required to be decided here. May be that it is a question of law, but then it can be termed as mixed question of law and the fact and parties are required to lead proper evidence. In other words, whether it was in the course of employment, will purely depend upon the facts which have been brought on record before the Labour Court. Since, in the instant case, no such contention has been raised by the petitioner to dispute the averment of the respondent, the petitioner at this stage now cannot be permitted to raise this controversy.

4. The question to be decided now is with regard to payment of backwages. The fact is that the petitioner had met with an accident and had sustained fracture which ultimately, resulted into some permanent disability and for that reason, the respondent was not in a position to discharge the duty of conductor. It also appears that the petitioner had not considered the case of the respondent sympathetically even when he had worked with the petitioner for almost 15 years. It further appears that the claim of the respondent to have light duty in

the service of the petitioner was not totally off the mark, more so when Clause 59 (6) of the settlement, specifically meant for such exigency. The petitioner instead thought it fit to terminate his service on the ground of medical unfitness. The petitioner had completely ignored the fact that even while retaining the respondent in service light duty could be given to him considering his disability. That has not been done and the respondent had to remain out of job from 30th April, 1987, till he was reinstated in service. Though respondent was willing to work he was precluded by the petitioner, no fault of the respondent can be found on that count. However, considering the fact that the respondent, to sustain himself might have done some odd job to raise some income. In that view of the matter, the order of the award of the Tribunal is slightly required to be modified. The Labour Court has not assigned any reasons for granting full backwages. Considering the aforesaid facts, ends of justice would meet if the petitioner is directed to pay 60% backwages to the respondent.

In view of the aforesaid, this petition is partly allowed. Now, the petitioner will now pay 60% backwages, instead of 100% backwages to the respondent. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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